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Attorney For Defendant Farhad Naderi

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re
FARHAD NADERI
Debtor

FRED FARID ASHOUR
Plaintiff

vs.

FARHAD NADERI
Defendant

Case No. 8:17-bk-12188-ES

Adv. 8:17-ap-01233-ES

Before the Honorable Erithe Smith

Chapter 7

**REPLY TO OPPOSITION TO MOTION TO
DISMISS COMPLAINT TO DETERMINE
NONDISCHARGEABILITY OF DEBT
PURSUANT TO 11 U.S.C. § 523(a)(2), DENIAL
OF DISCHARGE PURSUANT TO 11 U.S.C.
§ 727(a)(1), (a)(3), (a)(4), and (a)(5)**

[F.R.C.P. §§9(b), 12(b)(6); F.R.B.P. §§7009, 7012]

Date: 4-12-2018

Time: 2:00pm

Courtroom 5A

411 West Fourth Street, Santa Ana CA 92701

TO PLAINTIFF FRED FARID ASHOUR AND HIS ATTORNEY OF RECORD:

Debtor and Defendant Farhad Naderi ("Defendant") hereby replies to the 2-page Limited Opposition to Motion to Dismiss Complaint ("Opposition") filed herein by Plaintiff Fred Farid Ashour ("Plaintiff").

The Opposition concedes that the Motion to Dismiss be granted, but requests leave of court to state a cause of action but is silent as to which cause of action (presumably only for his 3rd cause

1 of action for fraud pursuant to 11 U.S.C. § 523(a)(2)(A)) because his stated grounds are: (a) the
2 underlying judgment in the Superior Court; & (2) plaintiff's discovery of the fraud (allegedly)
3 perpetuated by Defendant. Those 2 grounds only address a fraud cause of action.

4 The Opposition's request to grant the Motion to Dismiss concedes dismissal of Plaintiff's 1st
5 First Cause of Action for Intentional Transfer and Concealment of Debtor's Property or Property of
6 the Estate pursuant to 11 U.S.C. § 727(a)(2)(A) and (B), and Plaintiff's 2nd Cause of Action for False
7 Oath pursuant to 11 U.S.C. § 727(a)(4)(A). Defendant agrees, and said causes of action must be
8 dismissed with prejudice with no leave to amend.

9 Plaintiff's Opposition also fails to recite the statutory language of Local Bankruptcy Rule
10 9013-1(F).

11 As to Plaintiff's 3rd cause of action for fraud pursuant to 11 U.S.C. § 523(a)(2)(A), on or before
12 3-12-2018, Plaintiff's counsel notified Defendant's counsel of his intentions to file a Limited
13 Opposition. Defense counsel said that if Plaintiff files a detailed opposition showing how his proposed
14 amendment cures the deficiencies in the Complaint, he will not oppose the request for leave to amend.
15 Instead, Plaintiff filed a scant 2-page Limited Opposition that provides no explanation and no roadmap
16 for how his proposed amended complaint would cure the deficiencies raised in the Motion.

17 Merely stating: "plaintiff's discovery of the fraud" is woefully insufficient. Especially since
18 Plaintiff's Complaint §27 specifically alleges that **as of 1-16-2013** (the time Defendant allegedly
19 induced Plaintiff to release his lien securing the Plaintiff's loan of \$275,000.00 to Defendant to
20 allow Defendant to sell the real property which was subject to the lien), Defendant knew he was not
21 going to pay back the loan to Plaintiff and had no intention of doing so. He allegedly represented to
22 Plaintiff that if Plaintiff would release the lien, Defendant would sell the subject property and pay
23 back plaintiff in full. Plaintiff does not explain how this fraud claim is not barred by the applicable
24 3-year statute of limitations for fraud of Code of Civil Procedure § 338? Said fraud claim was
25 discharged by operation of law 3 years after, as of 1-16-2016. Further, according to the Complaint,
26 Defendant said that he would sell the property, and indeed sold the property. Wherein lies the fraud?

27 Further, as Defendant's Motion predicted, ***"and to the extent Plaintiff will attempt to amend***
28

1 *his Complaint to allege when he discovered the alleged fraud, that would be a lesson in futility.”*

2 Plaintiff’s grounds for leave to amend: “the underlying judgement in the Superior Court” is futile,
3 since Plaintiff sued Defendant in an Orange County lawsuit entitled: Fred Ashour vs. Farhad Naderi,
4 # 30-2016-00869831-CU-BC-CJC for breach of contract and common counts which resulted in a
5 default judgement against Defendant on 3-29-2017. **Said lawsuit did not list a fraud cause of action**
6 **against Defendant.** The doctrine of judicial estoppel precludes Plaintiff from asserting the fraud
7 cause of action in the adversary complaint against Defendant since it was not raised in the underlying
8 state court action.

9 Here, Plaintiff’s Opposition has not presented any facts or argument as to why leave to amend
10 should be granted, or how such an amendment could cure the deficiencies of the Complaint as raised
11 in the Motion. Defendant’s counsel’s promise not to oppose such a request was specifically
12 conditioned on Plaintiff providing such grounds. Plaintiff did not do so.

13 Accordingly, Defendant prays that this Court dismiss Plaintiff’s Complaint with prejudice, that
14 Plaintiff not be granted leave to amend, that Plaintiff take nothing by his Complaint, and that
15 Defendant’s alleged debt to Plaintiff be discharged. Further, Defendant prays that this Court issue a
16 finding of fact that the claims brought by Plaintiff are dischargeable, and that pursuant to 11 U.S.C.
17 §524(a)(1) and (2), this discharge should also serve to void any future judgment to determine the
18 personal liability of Defendant and operate as a permanent injunction against any actions whether
19 commenced pre-petition or post-petition. Further, Defendant prays that this Court award Defendant’s
20 costs and reasonable attorney’s fees in an amount which will be ascertained, pursuant to 11 U.S.C.
21 §523(d) and Federal Rule of Bankruptcy Procedure 9011.

22 According, Defendant respectfully requests that the Court enter an order granting the *Motion*
23 in its entirety, and providing for such other and further relief as this Court deems just.

24 DATED: March 19, 2018

LAW OFFICE OF BARUCH C. COHEN
A Professional Law Corporation

26 By /S/ Baruch C. Cohen
27 Baruch C. Cohen, Esq.
Attorney for Defendant Farhad Naderi

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
4929 Wilshire Boulevard, Suite 940, Los Angeles CA 90010

A true and correct copy of the foregoing document entitled **REPLY TO OPPOSITION TO MOTION TO DISMISS COMPLAINT TO DETERMINE NONDISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. § 523(a)(2), DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(1), (a)(3), (a)(4), and (a)(5)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On March 19, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Baruch C Cohen	bcc@BaruchCohenEsq.com, paralegal@baruchcohenesq.com
Karen S Naylor (TR)	acanzone@burd-naylor.com, knaylor@ecf.epiqsystems.com; knaylor@IQ7technology.com
US Trustee (SA)	ustpreion16.sa.ecf@usdoj.gov
Julie J Villalobos (PL)	julie@oaktreelaw.com, oakecfmail@gmail.com; villalobosjr51108@notify.bestcase.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On **March 19, 2018**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **March 19, 2018**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Erithe Smith, Ronald Reagan Federal Bldg. and Courthouse, 411 West Fourth St., Suite 5040, Santa Ana CA 92701

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 19, 2018 **Baruch C. Cohen**

Date Printed Name

/s/ Baruch C. Cohen

Signature